IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16731 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAPILABEN ARJUNSINH RATHOD

Versus

STATE OFGUJARAT

Appearance:

1. Special Civil Application No. 16731 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

Ms P B Sheth, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 11.11.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that four cases of prohibition under sections 65 and 66 of the Bombay Prohibition Act, 1949 were registered before North police station CR No. 2000/02, 568/03, 839/03 and 1397/03 on 17.11.2003, 21.4.2003, 20.6.2003 and on 1.10.2003 respectively alleging that he was found in possession of different quantities of foreign liquor on different dates. It was also alleged that two witnesses had given statements against the petitioner and, therefore, the petitioner was considered to be a bootlegger and hence he was ordered to be detained. The petitioner has challenged the detention order on the ground that the alleged activity would not be treated to be a threat to public order or public health. It has also been contended that the names of the unnamed witnesses who had rendered their statements have not been disclosed to the petitioner and, therefore, the petitioner could not effectively represent his case. Therefore, the order of detention is illegal and deserves to be quashed and set aside.

3. On receipt of the petition, rule was issued and in response to the notice of rule, Ms P B Sheth, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers.

4. On going through the grounds of detention, it is clear that except the said four prohibition offences, no other offence was registered against him. Now simply because four offences were registered, it cannot be said that the petitioner's activity had led to a threat to public order or public health.

5. So far as the statements of unnamed witnesses are concerned, two witnesses have given statements against the petitioner. It is well settled that before considering the statements of the witnesses, the detaining authority is required to supply names of the said witnesses to the detenu. It is true that under section 9(2) of the Act, the detaining authority has power of privilege to withhold names of the witnesses. However, this Court (Coram: Hon'ble Mr Justice A L Dave)

in Special Civil Application No.294/2000 passed on 19.4.2000 clearly laid down that before claiming privilege under section 9(2) of the Act, the detaining authority must have credible material before it in order to ascertain the reasonable fear or apprehension in the mind of the witnesses whose names have not been disclosed to the detenu. It has also been observed that if there is no credible material before the detaining authority, even non-disclosure of the names of the witnesses would violate principles of natural justice and consequently the petitioner's right of making representation under Article 22 (5) of the Constitution of India has been frustrated and hence the order of detention cannot be sustained in the eye of law.

6. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 11.11.2003 passed by respondent No.2 herein is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp